

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	File No. EB-02-TC-066
Time Warner Cable)	MA0048 (Medford County)
)	
Petition for Reconsideration and Refund Plan)	

ORDER ON RECONSIDERATION

Adopted: July 16, 2002

Released: July 17, 2002

By the Chief, Enforcement Bureau:¹

1. In this Order we consider a petition for reconsideration ("Petition") of Cable Services Bureau Order, DA 98-1839 ("Prior Order").² In the Prior Order, the Cable Services Bureau found the above-referenced operator's ("Operator's")³ January 1, 1998 cable programming services tier ("CPST") rate increase in the above-referenced community to be unreasonable. Operator supplemented its Petition with amended FCC Form 1240s and also filed a refund plan ("Refund Plan"). In this Order, we grant Operator's Petition, reject Operator's Refund Plan, and order refunds consistent with this Order.

2. Under the provisions of the Communications Act⁴ that were in effect at the time the complaints were filed, the Commission is authorized to review the CPST rates of cable systems not subject to effective competition to ensure that rates charged are not unreasonable. The Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act")⁵ and the Commission's rules required the Commission to review CPST rates upon the filing of a valid complaint by a subscriber or local franchising authority ("LFA"). The Telecommunications Act of 1996 ("1996 Act"),⁶ and the Commission's rules implementing the legislation ("Interim Rules"),⁷ required that a complaint against the CPST rate be filed with the Commission by an LFA that has received more than one subscriber complaint. The filing of a valid

¹ Effective March 25, 2002, the Commission transferred responsibility for resolving cable programming services tier rate complaints from the former Cable Services Bureau to the Enforcement Bureau. *See Establishment of the Media Bureau, the Wireline Competition Bureau and the Consumer and Governmental Affairs Bureau, Reorganization of the International Bureau and Other Organizational Changes*, FCC 02-10, 17 FCC Rcd 4672 (2002).

² *In the Matter of Time Warner Cable*, DA 98-1839, 13 FCC Rcd 19560 (CSB 1998).

³ The term "Operator" includes Operator's successors and predecessors in interest.

⁴ 47 U.S.C. §543(c) (1996).

⁵ Pub. L. No. 102-385, 106 Stat. 1460 (1992).

⁶ Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁷ *See Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 5937 (1996).

complaint triggers an obligation upon the cable operator to file a justification of its CPST rates.⁸ If the Commission finds the rate to be unreasonable, it shall determine the correct rate and any refund liability.⁹

3. Operators must use the FCC Form 1200 series to justify rates for the period beginning May 15, 1994.¹⁰ Cable operators may file an FCC Form 1210 to justify quarterly rate increases based on the addition and deletion of channels, changes in certain external costs and inflation.¹¹ Operators may justify their rates on an annual basis using FCC Form 1240 to reflect reasonably certain and quantifiable changes in external costs, inflation, and the number of regulated channels that are projected for the twelve months following the rate change.¹² Any incurred cost that is not projected may be accrued with interest and added to rates at a later time.¹³

4. In its Petition, Operator asserts that the Prior Order contained a clerical error. In support of its assertion, Operator submitted amended forms incorporating all of the adjustments made by the Cable Services Bureau in the Prior Order. We reviewed Operator's filing and agree that a clerical error was made in the Prior Order. We find Operator's revised calculated maximum permitted rate ("MPR") of \$19.66 to be reasonable, effective February 2, 1998 (the date the first valid complaint was filed with the LFA) through December 31, 1998 and we modify the Prior Order accordingly. Because Operator's actual CPST rate of \$20.12, effective January 1, 1998 through December 31, 1998, exceeds its revised calculated MPR of \$19.66, we find Operator's actual CPST rate of \$20.12, effective February 2, 1998 through December 31, 1998, to be unreasonable.

5. Upon review of Operator's Refund Plan,¹⁴ we find that the Refund Plan does not fulfill the requirements of this Order. Operator calculated its refund liability based on the Prior Order's MPR of \$19.41, and calculated interest only for 1998. We calculate Operator's refund liability as follows: For the period from February 2, 1998 through December 31, 1998,¹⁵ we calculate an overcharge of \$0.46 per month per subscriber. Our total calculation, including three percent franchise fees plus interest on the overcharges and franchise fees through July 31, 2002, equals \$108,761.00. We order Operator to refund this amount, plus any additional interest accrued to the date of refund, to its CPST subscribers within 60 days of the release of this Order.

6. Accordingly, IT IS ORDERED, pursuant to Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, that Operator's petition for reconsideration IS GRANTED.

⁸ See Section 76.956 of the Commission's rules, 47 C.F.R. §76.956.

⁹ See Section 76.957 of the Commission's rules, 47 C.F.R. §76.957.

¹⁰ See Section 76.922 of the Commission's rules, 47 C.F.R. § 76.922.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Operator calculated a total refund liability of \$131,622.03.

¹⁵ Operator's refund liability extends from the date of the first valid complaint, February 2, 1998, through December 31, 1998.

7. IT IS FURTHER ORDERED, pursuant to Sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that *In the Matter of Time Warner Cable*, DA 98-1839, 13 FCC Rcd 19560 (CSB 1998) IS MODIFIED TO THE EXTENT INDICATED HEREIN.

8. IT IS FURTHER ORDERED, pursuant to Sections 0.111, 0.311 and 76.962 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311 and §76.962, that Operator shall refund to subscribers in the franchise area referenced above the total amount of \$108,761.00, plus any additional interest that accrues between July 31, 2002 and the date of refund, within 60 days of the release of this Order.

9. IT IS FURTHER ORDERED, pursuant to Sections 0.111, 0.311 and 76.962 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311 and §76.962, that Operator file a certificate of compliance with the Chief, Enforcement Bureau, within 90 days of the release of this Order certifying its compliance with this Order.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau